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TARGET CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VALLAVISTA CORPORATION, a California
corporation,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware corporation;
TARGET CORPORATION, a Minnesota
corporation; EBAGS, INC., a Colorado
corporation; EMPORIUM LEATHER
COMPANY, INC., a New Jersey corporation,
doing business as ROYCE LEATHER; and
FASHION HANDBAGS, INC., a Nevada
corporation, doing business as BO BO BAGS,

Defendants.

Case No. C-07-05360-WHA

**STIPULATED PROTECTIVE
ORDER**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords extends only to the
8 limited information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
10 Stipulated Protective Order creates no entitlement to file confidential information under seal;
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
12 that will be applied when a party seeks permission from the Court to file material under seal.

13
14 2. DEFINITIONS

15 2.1 Party: any party to this action, including all of its officers, directors, employees,
16 consultants, retained experts, and outside counsel (and their support staff).

17 2.2 Disclosure or Discovery Material: all items or information, regardless of the
18 medium or manner generated, stored, or maintained (including, among other things, testimony,
19 transcripts, or tangible things) that are produced or generated in disclosures or responses to
20 discovery in this matter.

21 2.3 "Confidential" Information or Items: information (regardless of how generated,
22 stored, or maintained) or tangible things that qualify for protection under standards developed
23 under Fed. R. Civ. P. 26(c).

24 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a
25 Producing Party.

26 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery
27 Material in this action.
28

1 2.6 Designating Party: a Party or non-party that designates information or items that it
2 produces in disclosures or in responses to discovery as “Confidential.”

3 2.7 Protected Material: any Disclosure or Discovery Material that is designated as
4 “Confidential.”

5 2.8 Outside Counsel: attorneys who are not employees of a Party but who are retained
6 to represent or advise a Party in this action.

7 2.9 House Counsel: attorneys who are employees of a Party.

8 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
9 support staffs).

10 2.11 Expert: a person with specialized knowledge or experience in a matter pertinent to
11 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
12 consultant in this action and who is not a past or a current employee of a Party or of a competitor
13 of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party
14 or a competitor of a Party’s. This definition includes a professional jury or trial consultant
15 retained in connection with this litigation.

16 2.12 Professional Vendors: persons or entities that provide litigation support services
17 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
18 storing, or retrieving data in any form or medium; etc.) and their employees and subcontractors.

19
20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only Protected Material
22 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
23 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
24 parties or counsel to or in court or in other settings that might reveal Protected Material.

1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs.

5
6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
8 or non-party that designates information or items for protection under this Order must take care to
9 limit any such designation to specific material that qualifies under the appropriate standards. A
10 Designating Party must take care to designate for protection only those parts of material,
11 documents, items, or oral or written communications that qualify—so that other portions of the
12 material, documents, items, or communications for which protection is not warranted are not
13 swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
15 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
16 unnecessarily encumber or retard the case development process, or to impose unnecessary
17 expenses and burdens on other parties) expose the Designating Party to sanctions.

18 If it comes to a Party's or a non-party's attention that information or items that it
19 designated for protection do not qualify for protection at all, or do not qualify for the level of
20 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
21 withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
23 (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
24 material that qualifies for protection under this Order must be clearly so designated before the
25 material is disclosed or produced.

26 Designation in conformity with this Order requires:
27
28

1 (a) For information in documentary form (apart from transcripts of depositions
2 or other pretrial or trial proceedings), that the Producing Party affix the legend
3 “CONFIDENTIAL” at the top of each page that contains protected material. If only a portion or
4 portions of the material on a page qualifies for protection, the Producing Party also must clearly
5 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
6 specify, for each portion, the level of protection being asserted (“CONFIDENTIAL”).

7 A Party or non-party that makes original documents or materials available for inspection
8 need not designate them for protection until after the inspecting Party has indicated which
9 material it would like copied and produced. During the inspection and before the designation, all
10 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
11 inspecting Party has identified the documents it wants copied and produced, the Producing Party
12 must determine which documents, or portions thereof, qualify for protection under this Order;
13 then, before producing the specified documents, the Producing Party must affix the appropriate
14 legend (“CONFIDENTIAL”) at the top of each page that contains Protected Material. If only a
15 portion or portions of the material on a page qualifies for protection, the Producing Party also
16 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
17 margins) and must specify, for each portion, the level of protection being asserted
18 (“CONFIDENTIAL”).

19 (b) For testimony given in deposition or in other pretrial or trial proceedings,
20 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
21 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
22 any portions of the testimony that qualify as “CONFIDENTIAL.” When it is impractical to
23 identify separately each portion of testimony that is entitled to protection, and when it appears
24 that substantial portions of the testimony may qualify for protection, the Party or non-party that
25 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
26 proceeding is concluded) a right to have up to 20 days to identify the specific portions of the
27 testimony as to which protection is sought and to specify the level of protection being asserted
28 (“CONFIDENTIAL”). Only those portions of the testimony that are appropriately designated for

1 protection within the 20 days shall be covered by the provisions of this Stipulated Protective
2 Order.

3 Transcript pages containing Protected Material must be separately bound by the court
4 reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," as
5 instructed by the Party or non-party offering or sponsoring the witness or presenting the
6 testimony.

7 (c) For information produced in some form other than documentary, and for
8 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
9 container or containers in which the information or item is stored the legend "CONFIDENTIAL."
10 If only portions of the information or item warrant protection, the Producing Party, to the extent
11 practicable, shall identify the protected portions, specifying whether they qualify as
12 "CONFIDENTIAL."

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
14 designate qualified information or items as "CONFIDENTIAL" does not, standing alone, waive
15 the Designating Party's right to secure protection under this Order for such material. If material
16 is appropriately designated as "CONFIDENTIAL" after the material was initially produced, the
17 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
18 that the material is treated in accordance with the provisions of this Order.

19
20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
22 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
23 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
24 waive its right to challenge a confidentiality designation by electing not to mount a challenge
25 promptly after the original designation is disclosed.

26 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
27 Party's confidentiality designation must do so in good faith and must begin the process by
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1 conferring directly (in voice-to-voice dialogue; other forms of communication are not sufficient)
2 with counsel for the Designating Party. In conferring, the challenging Party must explain the
3 basis for its belief that the confidentiality designation was not proper and must give the
4 Designating Party an opportunity to review the designated material, to reconsider the
5 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
6 designation. A challenging Party may proceed to the next stage of the challenge process only if it
7 has engaged in this meet and confer process first.

8 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
9 designation after considering the justification offered by the Designating Party may file and serve
10 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
11 that identifies the challenged material and sets forth in detail the basis for the challenge. Each
12 such motion must be accompanied by a competent declaration that affirms that the movant has
13 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
14 forth with specificity the justification for the confidentiality designation that was given by the
15 Designating Party in the meet and confer dialogue.

16 The burden of persuasion in any such challenge proceeding shall be on the Designating
17 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
18 question the level of protection to which it is entitled under the Producing Party's designation.
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20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
22 or produced by another Party or by a non-party in connection with this case only for prosecuting,
23 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
24 to the categories of persons and under the conditions described in this Order. When the litigation
25 has been terminated, a Receiving Party must comply with the provisions of section 11, below
26 (FINAL DISPOSITION).
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1 Protected Material must be stored and maintained by a Receiving Party at a location and
2 in a secure manner that ensures that access is limited to the persons authorized under this Order.

3 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
5 disclose any information or item designated "CONFIDENTIAL" only to:

6 (a) The Receiving Party's Outside Counsel of record in this action, as well as
7 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
8 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
9 hereto as Exhibit A;

10 (b) The officers, directors, and employees (including House Counsel) of the
11 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
12 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
15 Bound by Protective Order" (Exhibit A);

16 (d) The Court and its personnel;

17 (e) Court reporters, their staffs, and professional vendors to whom disclosure
18 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
19 Protective Order" (Exhibit A);

20 (f) During their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
22 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
23 Protected Material must be separately bound by the court reporter and may not be disclosed to
24 anyone except as permitted under this Stipulated Protective Order; and/or

25 (g) The author of the document or the original source of the information.
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8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

10. FILING PROTECTED MATERIAL

Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.

11. FINAL DISPOSITION

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to the use in evidence of any of the material covered by this Protective Order.

STIPULATED and AGREED TO:

Dated: July 14, 2008

RANDICK O'DEA & TOOLIATOS, LLP

By: /s/ Kevin R. Martin
Kevin R. Martin

Attorneys for Plaintiff
VALLAVISTA CORPORATION

Dated: July 14, 2008

MORRISON & FOERSTER LLP

By: /s/ Jennifer Lee Taylor
Jennifer Lee Taylor

Attorneys for Defendant
TARGET CORPORATION

I, Jennifer Lee Taylor, am the ECF User whose ID and password are being used to file this Stipulated Protective Order. In compliance with General Order 45, X.B., I hereby attest that Kevin R. Martin has concurred in this filing.

ORDER

GOOD CAUSE APPEARING, IT IS SO ORDERED.

Dated: _____, 2008

Hon. William H. Alsup

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ in the case of *Vallavista Corp. v. Amazon.com et al.*, Case No. C-07-05360-WHA. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]